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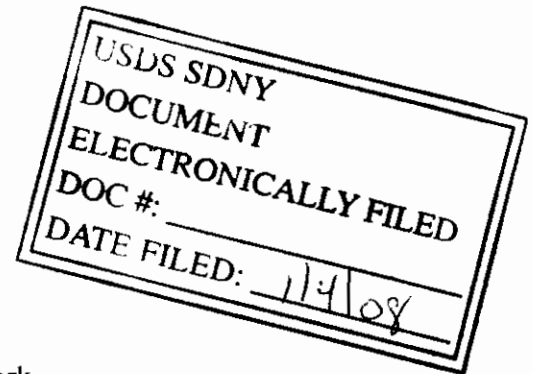
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January 4, 2008



Via email to eileen_levine@nysd.uscourts.gov

Hon. Richard J. Sullivan
United States District Judge
United States District Court for the Southern District of New York
500 Pearl Street
New York, New York 10017

Re: Fiero, et ano. v. National Association of Securities Dealers, Inc.
07-CV-07679 (RJS) (S.D.N.Y.)

Dear Judge Sullivan:

We represent plaintiffs (the "Fieros") in the above-referenced action. We write at the suggestion of Ms. Levine of your chambers to apprise you of the status of this matter so Your Honor can consider rescheduling (or holding off rescheduling) the dates of this Court's December 4 order (copy attached), which we understood were extended *sine die* by your December 19 endorsement of our December 18 letter (endorsed copy attached).

Procedurally, defendant ("NASD")¹ has until February 12, 2008 to answer the complaint (having executed a waiver of service of summons only last week, on December 27, 2007). Whether the action ultimately proceeds should depend on the outcome of a jurisdictional issue that the parties argued before the New York Court of Appeals this past week on January 2 (upon which a decision is expected within 30-60 days).

As background, the NASD sued the Fieros in state court (Supreme Court, New York County) seeking to recover a fine imposed in an NASD disciplinary hearing. Except for a few recent cases, the NASD has never since its inception in 1939 sued to recover a disciplinary fine. Our position is that the NASD, for various reasons, has no authority to enforce its fine, and that its action is nonetheless time-barred. The principal issue orally argued at the New York Court of Appeals this past week was (among the other issues) whether such suit should have been filed instead, if at all, in federal court due to exclusive federal jurisdiction (an issue not raised in the courts below).

¹ The defendant, National Association of Securities Dealers, Inc., recently changed its name to Financial Industry Regulatory Authority, Inc. (a/k/a FINRA).

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The Fieros filed this federal declaratory judgment action seeking a declaration of non-liability. This matter presumes that the New York Court of Appeals will rule that the state court lacks subject matter jurisdiction over the dispute, and so this action is in theory contingent on the outcome at the New York Court of Appeals and any review thereof. The Fieros filed this action in order to maintain jurisdiction in geographical New York, where the NASD brought its action. The Fieros have offered to the NASD to voluntarily dismiss this action without prejudice to either party, with the proviso that New York remain the locale for any subsequent suit. This offer has thus far been declined.

If the Court finds this latter possibility (which would remove the case from the docket) the most sensible, we would welcome the Court's intervention. Alternatively, the Court may wish to set dates that begin in March or April, or await a decision from the New York Court of Appeals prior to setting new dates.

Respectfully submitted,



Brian D. Graifman

Encl.

Cc: Terri L. Reicher, Esq. (via email: Terri.Reicher@finra.org)
Financial Industry Regulatory Authority, Inc.
(f/k/a National Association of Securities Dealers, Inc.)
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The parties are to submit a joint status letter setting forth responses to the 7 requests referenced in the Court's December 4, 2008 order. The letter shall also apprise the court of further developments in the case before the New York Court of Appeals. The status letter shall be submitted by March 7, 2009.

SO ORDERED

Dated: 1/4/08

RICHARD J. SULLIVAN
U.S.S.J.